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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION**

IN RE: SOCIAL MEDIA ADOLESCENT  
ADDICTION/PERSONAL INJURY  
PRODUCTS LIABILITY LITIGATION

THIS DOCUMENT RELATES TO:

ALL ACTIONS

MDL No. 3047

Case No. 4:22-md-03047-YGR-TSH

Honorable Yvonne Gonzalez Rogers

**DEFENDANTS' ADMINISTRATIVE  
MOTION PURSUANT TO CIVIL LOCAL  
RULE 7-11 FOR AMENDMENT OF  
DEADLINES UNDER CASE  
MANAGEMENT ORDER 10 AND  
OTHER RELIEF**

Pursuant to Civil Local Rule 7-11, Defendants respectfully move the Court for relief as a result of Plaintiffs' failures to comply with their obligations to provide Plaintiff Fact Sheets ("PFSs") for Personal Injury ("PI") Plaintiffs and School District ("SD") Plaintiffs by April 1, 2024—including the

failure of 45 PI Plaintiffs (almost 20% of member cases) to submit PFSs at all.<sup>1</sup> The issues raised herein cannot wait to be addressed until the Parties' next Case Management Conference on April 19 or Discovery Management Conference on April 22, as both post-date the current April 15 deadline for the parties to identify cases for the bellwether discovery pools.

### ARGUMENT

Defendants move to address a markedly unlevel playing field that results from Plaintiffs falling short of their Court-ordered discovery obligations under a schedule that they pushed to accelerate with deadlines they assured the Court they would meet. They have not done so. Plaintiffs have failed to satisfy the Court's April 1 deadline for submission of PFSs. 45 PI Plaintiffs out of a total of 233 bellwether eligible cases (19%) have submitted no PFS at all, and the same is true for at least 13 SD Plaintiffs out of a total of 121 bellwether eligible cases (10%).<sup>2</sup> This is especially problematic and prejudicial to Defendants given the expedited discovery schedule that Plaintiffs requested, Plaintiffs' repeated assurances that they would produce complete PFSs by the April 1 deadline, and the fast-approaching April 15 deadline for the parties to select bellwether discovery cases—for which Defendants need the outstanding PFS information.

Case Management Order 10 ("CMO 10") required Plaintiffs to produce complete PFSs by April 1. (Dkt. 604 at 1.) Although the original PI Plaintiff PFS Implementation Order set a deadline for PFS productions of May 13 (Dkt. 596, ¶ 2(a)), and a deadline 60 days thereafter for the balance of PFSs for any firm with more than 50 due on the initial date (*id.*, ¶ 2(b)), the Court *advanced* the production deadline for PI Plaintiffs to April 1 in response to *Plaintiffs' request* for an expedited discovery schedule. (*See* Dkt. 604 at 1 n.3.)

The Court set the April 1 deadline for the submission of PFSs in recognition that Defendants would need the information about Plaintiffs and their claims contained in the PFSs to select cases for the bellwether discovery pool on April 15. No fair or deliberate MDL bellwether process can occur where Plaintiffs are permitted to withhold information about themselves, their claims, or their alleged

<sup>1</sup> The parties have conferred; Plaintiffs state that they oppose the requested relief. (*See* Declaration.)

<sup>2</sup> The SD Plaintiff count includes only those "whose case was on file or transferred to this MDL as of March 1, 2024," consistent with the School District Implementation Order. (Dkt. 731.)

injuries (all of which lie exclusively in Plaintiffs' possession). Consistent with CMO 10, at last month's Discovery Management Conference, Plaintiffs' counsel represented to Magistrate Judge Kang that they "expect the plaintiffs' fact sheets for all cases that would be in the bellwether pool to be filed *on April 1st as they're required to be.*" (Ex. 1, 3/21/24 DMC Tr. at 25:18-26:2 (emphasis added).)<sup>3</sup>

Many Plaintiffs, however, did not produce PFSs by April 1. Plaintiffs themselves concede that at least 22 PI Plaintiffs failed to submit PFSs altogether. (Ex. 5, 4/3/24 Ps' Ltr., at 4.)<sup>4</sup> But by Defendants' count, the accurate number is 45 (out of 233) PI Plaintiffs who have still not submitted a PFS, including 37 whose short form complaints predate the entry of the Court's prior PI Plaintiff Implementation Order. (Ex. 6, 4/5/24 Defs' Email.) At least thirteen of the 121 eligible SD Plaintiffs have also failed to serve PFSs. (Ex. 7, SD PFS Chart.)

Plaintiffs have taken the position that substantial numbers of the PI Plaintiffs' PFSs were not actually due on April 1. (*See* Ex. 5, 4/3/24 Ps' Ltr., at 3.) No support exists for this position in CMO 10 (or in the Court's prior guidance). CMO 10 superseded the PI Plaintiff Implementation Order. Indeed, Plaintiffs' position, if adopted, would thwart the Court's goal of ensuring symmetry of information on the current schedule (whose deadlines Plaintiffs themselves requested). At minimum, any plaintiff who filed a short form complaint before CMO 10's entry on February 8 had a duty to serve a complete PFS on the April 1 deadline the Order set forth. (Dkt. 604 at 1 n.3 (providing, without exception, that "[t]his order hereby ADVANCES the deadline set for the PI plaintiffs in the Implementation Order").<sup>5</sup>

<sup>3</sup> (*See also, e.g.,* Ex. 2, 2/22/24 DMC Tr. at 21:2-12 (statement from Plaintiffs' counsel that they "are proposing" that "each minor plaintiff can fill out a 43-page PFS[] with over a hundred questions by April 1st").) Importantly, Plaintiffs made these representations after submitting on behalf of PI and SD Plaintiffs single initial disclosures devoid of substantive information, assuring the Court and Defendants that their compliance with the upcoming PFS deadline would cure any deficiency and prejudice. (*See, e.g.,* Ex. 3, 1/25/24 DMC Tr. at 120:25-122:12; Ex. 4, Ps' 3/11/24 Ltr., at 2.)

<sup>4</sup> Plaintiffs vaguely state they "understand some" still-unspecified number of these deficient claimants "will be dismissing and others may have provided their PFS within 24-48 hours of the deadline." (*Id.*)

<sup>5</sup> Rather than address this point, Plaintiffs' recent letter falls back on attacking an extreme hypothetical that nobody is arguing (and, so far as Defendants are aware, no case reflects): that "if Defendants' reading of CMO 10 were correct, a child whose SFC was filed on March 31, 2024 to meet a statute of limitation concern would have to have filed their PFS within 24 hours." (*See* Ex. 5, 4/3/24 Ps' Ltr., at 3.) This is a deflection and a strawman. And, in fact, at least two PI Plaintiffs filed short form complaints on April 1 *and* served PFSs the same or next day. (*See, e.g.,* Ex. 8, MDL-Centrality Information for [REDACTED])

1 If Plaintiffs intended to take the position that certain PFSs were not due on April 1, they should  
 2 have at least raised it proactively with the Court and Defendants, rather than making a unilateral  
 3 decision to grant themselves an extension of their PFS deadline and, in the process, skewing the pool  
 4 of cases from which the Parties can identify bellwether-discovery picks. Nothing in the letter or spirit  
 5 of the Court's prior orders, the Parties' conferences before the Court, or the Parties' informal  
 6 discussions (in camera or otherwise) justifies such a one-sided gaming of the bellwether discovery  
 7 pool.

8 But this is exactly what has happened. At least one firm, the Social Media Victims Law Center,  
 9 has taken the position that only 50 of its' clients PFSs were due on April 1, and that others would be  
 10 served "within 60 days"—i.e., *after* the bellwether selection deadline. Thus, according to them,  
 11 Plaintiffs' counsel can unilaterally choose which cases are shielded from bellwether consideration by  
 12 omitting them from the initial group of 50 PFSs served by April 1. (Ex. 9, 4/2/24 SMVLC Corr. and  
 13 Chart.)<sup>6</sup>

#### 14 CONCLUSION

15 The result of Plaintiffs' failure to satisfy the PFS-production deadlines is that the schedule and  
 16 goals set forth in CMO 10 have already been frustrated at this early stage. Defendants are materially  
 17 prejudiced, as they are forced to engage in the bellwether selection process without information on  
 18 19% of PI Plaintiffs and 10% of SD Plaintiffs and their claims. Accordingly, Defendants respectfully  
 19 request that the Court enter an Order that: (1) requires each Plaintiff who filed an action before March 1,  
 20 2024 but who did not submit a PFS by April 1, 2024 to do so within seven days from the entry of the  
 21 Court's Order, subject to the dismissal of the action with prejudice; (2) extends CMO 10's bellwether-  
 22 selection deadline and all other case management deadlines by 14 days from the entry of the Court's

23  
 24 <sup>6</sup> Moreover, while Defendants continue to evaluate the PFSs actually served by Plaintiffs, several  
 25 material deficiencies have already been identified. For example, although Plaintiffs' counsel  
 26 represented at the February 6 in-chambers conference they were collecting and would produce their  
 27 own medical records with the PFSs, dozens of PI plaintiffs appear to have provided none. (*See, also,*  
 28 *e.g.*, Ex. 10, [REDACTED] (PI Plaintiff PFS containing nothing beyond Section I (Case Information) and  
 name, gender, social security number, and date of birth); Ex. 11, Crestwood PFS (SD Plaintiff PFS  
 providing no responses to Section XI requests for documents related to student mental health and social  
 media use, and no information about district's overall budget).)

Order; (3) reduces Plaintiffs' bellwether-discovery selections from six to five PI and SD cases; and  
(4) grants any other relief that the Court deems appropriate.

Dated: April 5, 2024

Respectfully submitted,

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**ATTESTATION**

I, Geoffrey M. Drake, hereby attest, pursuant to N.D. Cal. Civil L.R. 5–1, that the concurrence to the filing of this document has been obtained from each signatory hereto.

DATED: April 5, 2024

By: /s/ Geoffrey M. Drake  
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